



# California Fair Political Practices Commission

December 16, 1988

Henry G. Murdock  
Alpine County District Attorney  
P.O. Box 248  
Markleeville, CA 96120

Re: Your Request For Advice  
Our File No. A-88-447

Dear Mr. Murdock:

You have requested advice on behalf of Chris Gansberg, Jr. about application of conflict of interest provisions of the Political Reform Act (the "Act")<sup>1/</sup> to his duties on the Board of Supervisors of Alpine County.

## QUESTION

Mr. Gansberg is an employee of a ranch owned by his father and uncle. The board of supervisors will be considering appeals of decisions concerning an application to rezone from agricultural to industrial uses land that borders on ranch property.

Is Mr. Gansberg disqualified from decisions regarding rezoning of the property adjacent to the Gansberg ranch?

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

### CONCLUSION

Any decisions about the application to rezone property adjacent to the Gansberg ranch will have a reasonably foreseeable material financial effect on the value of the Gansberg ranch property, different from the effect on the general public. Therefore, Mr. Gansberg is disqualified from participating in any decision regarding the rezoning application.

### FACTS

Mr. Gansberg is a cattle rancher who lives on and works for a ranch owned by the Gansberg Brothers -- Mr. Gansberg's father and uncle. Mr. Gansberg has no beneficial or ownership interest or option to acquire a property interest in the ranch. As an employee, Mr. Gansberg has the right to graze some of his own cattle on the ranch. Payment for grazing rights are deducted from his salary.

Hubert Bruns owns land next to the Gansberg ranch. For years Mr. Bruns has had a gravel pit on his property. He now wants to expand the gravel pit and an asphalt plant. Consequently, Mr. Bruns has filed an application to rezone his property from agricultural to industrial use.

To approve Mr. Bruns' application, the county must certify an environmental impact report ("EIR"). The planning commission's decision to certify the EIR has been appealed to the board of supervisors. The planning commission also will be considering the rezoning application. However the planning commission decides this application, the planning commission's decision probably will be appealed to the board of supervisors.

The Gansberg brothers and Mr. Bruns share water rights to a mountain stream that runs through both properties; the Gansberg brothers have a right to appropriate 7/10 and Mr. Bruns has a right to 3/10 of the water in the stream.<sup>2/</sup> Mr. Gansberg believes there is a 20-percent likelihood that the Gansberg ranch will sell water and rocks to Mr. Bruns if his application is approved. Mr. Gansberg also believes that rezoning will decrease the value of ranch property by at least \$10,000.

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<sup>2/</sup> Mr. Gansberg provided us with this information by telephone on December 8 and 12, 1988.

### ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which an official knows or has reason to know he or she has a financial interest. An official has a financial interest in a decision that will have a foreseeable and material financial effect, different from the effect on the general public, on the official, the official's immediate family, or on the following:

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(c).

Mr. Gansberg is a public official. (Section 82048.) The Gansberg ranch is a source of income to Mr. Gansberg. (Section 82030(a).) Consequently, he will be disqualified from participating in a decision that will have a foreseeable and material financial effect on the Gansberg ranch.

### Foreseeability

The effect of a decision is foreseeable if there is a substantial likelihood it will occur. An effect does not have to be certain to be foreseeable. If an effect were a mere possibility, however, it would not be foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, 206-207, copy enclosed.)

It is foreseeable that the decision to rezone Mr. Bruns' property will affect the Gansberg ranch. There is a 20-percent likelihood the Gansberg ranch will sell water and rocks to Mr. Bruns should his application be approved. It also is foreseeable that a change from agricultural to industrial use will reduce the value of Gansberg ranch land. Therefore, to know whether disqualification is required, Mr. Gansberg must determine the extent of the decision's effect on the Gansberg ranch.

### Materiality

For purposes of disqualification, the effect of a decision must be material. The Gansberg ranch is a business entity because it is an enterprise operated for profit. (Section 82005.) Therefore, Mr. Gansberg must determine whether a decision about Mr. Bruns' application will have a material financial effect on a business entity the size of the Gansberg ranch.

Regulation 18702.2 (copy enclosed) has guidelines for evaluating the extent of a decision's effect on a business entity. If we assume the Gansberg ranch is a small business, the standards of subdivision (g) would apply to a business the size of the Gansberg ranch. The effect of the decision on the ranch is material if it is foreseeable that:

- (1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or
- (2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or
- (3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

### Regulation 18702.2(g).

We do not have enough information to determine whether potential sales of water and rock would have a material financial effect on the gross revenues of the Gansberg ranch. We have enough information, however, about the effect on the value of ranch property. Mr. Gansberg estimates the rezoning decision will decrease the value of Gansberg ranch property by at least \$10,000. Consequently, Mr. Gansberg is disqualified from participating in the decision because it will result in a decrease of \$10,000 or more in the value of ranch assets.

Disqualification means Mr. Gansberg also may not participate in any decision to certify the EIR. The EIR decision is linked directly to the rezoning decision because it


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is a necessary step in the process to rezone Mr. Bruns' land. (Miranda Advice Letter, No. I-88-373, copy enclosed.). Any decision about the EIR will have a foreseeable and material financial effect on Mr. Brun's rezoning application and, in turn, on the Gansberg ranch. Therefore, Mr. Gansberg is disqualified from the EIR decision.

I hope this letter provides adequate guidance. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Margarita Altamirano  
Counsel, Legal Division

DMG:MA:aa

Enclosures



# OFFICE OF THE DISTRICT ATTORNEY

## County of Alpine, State of California

HENRY G. MURDOCK  
District Attorney

November 18, 1988

John Larson, Chairman  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

Re: Chris Gansberg, Jr., Supervisor, District 5

Dear Mr. Larson:

I have been presented with a question of possible conflict of interest and, after a conversation with the legal department of your Commission, I am satisfied that there is no conflict. The facts are as follows:

The Supervisor for District 5, Chris Gansberg, Jr., is a neighbor of an applicant seeking a rezoning from agricultural to industrial. Specifically, the applicant seeks to operate a gravel pit and asphalt plant on land that is currently agricultural pasture land.

The Gansberg ranch is directly adjacent to the applicant's ranch. Further, the actual project is directly adjacent to the Gansberg ranch. Water that flows through the applicant's ranch would be used for this project's operation. This water is jointly owned by the applicant, the Gansberg ranch and several other ranches.

The Supervisor, Chris Gansberg, Jr., has absolutely no ownership interest by way of fee, trust or any other arrangement in the Gansberg ranch. The entire Gansberg ranch property is owned by his father, Chris Gansberg, Sr. It is my understanding that the term "family" as used by the Fair Political Practices Commission refers to immediate family, i.e., spouse and children. Chris Gansberg, Jr., is an employee of the Gansberg ranch.

The Planning Commission has made favorable findings of fact and certified the EIR for this project. They have yet to consider the question of rezoning.

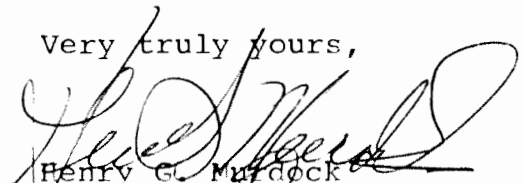
An appeal has been taken to challenge the certification of the EIR to the Board of Supervisors. Regardless of the reconsideration of the Planning Commission regarding zoning, another appeal is anticipated. The Board has appellate review over the Planning Commission as to all questions.

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FPPC

It is expected that Chris Gansberg, Jr., will be called upon twice to consider appeals and vote on this one project (the EIR certification and the zoning).

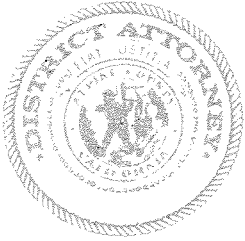
I ask the Fair Political Practices Commission for an opinion as to whether or not a conflict exists. If I may furnish more information, please let me know.

Very truly yours,



Henry G. Muldock  
District Attorney

HGM/jl



# OFFICE OF THE DISTRICT ATTORNEY

County of Alpine, State of California

HENRY G. MURDOCK  
District Attorney

November 18, 1988

John Larson, Chairman  
Fair Political Practices Commission  
428 J Street, Suite 800  
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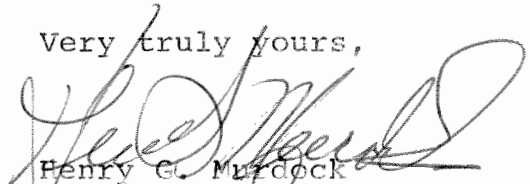
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Very truly yours,



Henry G. Murdock  
District Attorney

HGM/jl



# California Fair Political Practices Commission

November 29, 1988

Henry G. Murdock  
District Attorney  
County of Alpine  
Courthouse  
P.O. Box 248  
Markleeville, CA 96120

Re: 88-447

Dear Mr. Murdock:

Your letter requesting advice under the Political Reform Act was received on November 23, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

*Diane M. Griffiths*  
Diane M. Griffiths  
General Counsel

DMG:plh  
cc: Supervisor Chris Gansberg, Jr.